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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/659,224      | 09/10/2003  | Alfons Resing        | 09187-US            | 5757             |

7590 08/27/2004

DEERE & COMPANY  
Patent Department  
One John Deere Place  
Moline, IL 61265-8098

EXAMINER

KOVACS, ARPAD F

ART UNIT PAPER NUMBER

3671

DATE MAILED: 08/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                      |               |  |
|------------------------------|----------------------|---------------|--|
| <b>Office Action Summary</b> | Application No.      | Applicant(s)  |  |
|                              | 10/659,224           | RESING ET AL. |  |
|                              | Examiner             | Art Unit      |  |
|                              | Árpád Fábrián Kovács | 3671          |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>6/21/2004</u> .   | 6) <input type="checkbox"/> Other: _____                                    |

### ***Conclusion***

#### **Claim Rejections - 35 USC § 102**

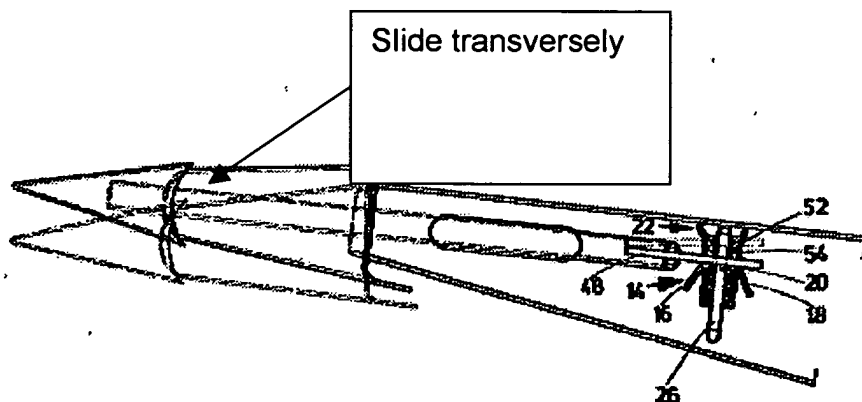
1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

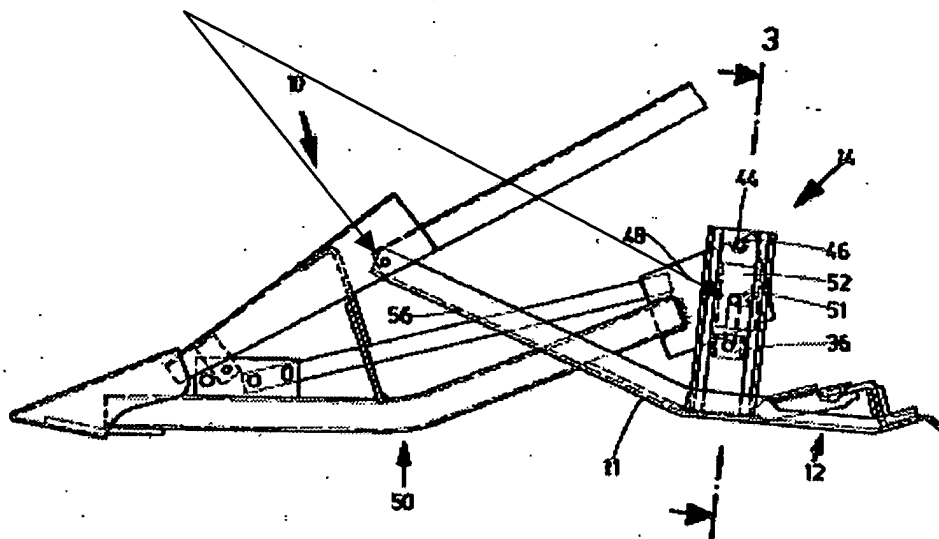
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim(s) 1-6, 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Doll (EP 45015A1).

Doll discloses & shows:



Pivoting about an  
approx. horizontal  
axis



in re claims 1 & 16: a stalk divider supported on a bearing (ref 51), **can be** deflected sideways relative to the intake/pick-up device & transverse to the forward direction (abstract);

in re claim 2: to pivot about an approx. horizontal axis (see fig 1, for example at forward end member ref 56);

in re claims 3, 4: to slide transversely sideways relative to the forward direction (abstract; & see fig 2);

in re claim 5: connected pendulously with a parallelogram guidance linkage (fig 1, ref 48);

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in re claim 6: to float freely (fig 1).

3. Claim(s) 1-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Welsch (EP 1036495 A1).

Welsch discloses all the elements in fig 2-3, wherein the stalk divider (conical, circular shaped, stepped section, smaller radial than larger rear section) **can be** deflected sideways, transverse to the forward direction, pendulously, **approximately** horizontal axis pivoting, to slide, **can be** positively rotated.

4. Claim(s) 1-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Klotz (EP 1179292 A1).

Similarly, Klotz meets the claimed language, especially see fig 2 (side divider is shown to slide sideways), fig. 3-4.

### ***Response to Arguments***

5. Applicant's arguments filed 8/18/2004 have been fully considered but they are not persuasive.

6. It has been noted, and as argued, that claim 1 has been amended to include: "**can be** deflected ..." functional recitation. Although it has been demonstrated that the prior art capable of being deflected sideways, it is further noted that functional recitation must be expressed as a "means" for performing the specified function, and must be supported by recitation in the claim of sufficient structure to warrant the presence of the functional language. *In re Fuller*, 1929 C.D. 172; 388 O.G. 279.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Albinger, Weichholdt.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

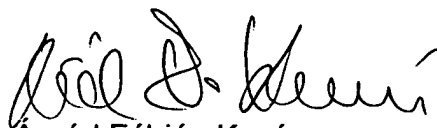
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Árpád Fábián Kovács whose telephone number is 703-308-5897. The examiner can normally be reached on Mo-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 703 308 3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Árpád Fábíán Kovács  
Primary Examiner  
Art Unit 3671

ÁFK